Cr. 732/06

(1)

S[illegible] Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 21 OF 2006

APPELLANT
Plaintiff

Kushwa S/o Awadh Ram, aged about 60years, Caste- Kurmi, agriculturist, R/o Village- Bundela, Tahsil- Pamgarh, Distt- Janjgir-Champa (C.G.)

P.R. No. 1/2/06
Presented by Shri Pyarelal Singh
dated 16/1/06

V E R S U S

RESPONDENTS
Defendants

1. Ant Ram S/o Parau, aged about 50 years.
2. Khikh Ram S/o Dhansai, aged about 45 years.
3. Kashi Ram S/o Samaru, aged about 40 years.

The respondent no. 1, 2 and 3 are resident of village Bundeli, Tahsil Pamgarh, District- Janjgir Champa C.G.

4. State of C.G., Through the Collector Janjgir-Champa C.G.

RECEIVED-COPY
Dt. 16-1-06
CLERK to A. G. BILASPUR

MEMO OF SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक S.A. 21 सन् 2006

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

30.8.2006

Shri Rakesh Pandey, counsel for the appellant.

Arguments on admission heard.

Order dictated as follows:

ORAL ORDER
(30.8.2006)

This is the plaintiff's Second Appeal, filed under Section 100 of the Code of Civil Procedure. The plaintiff lost in both the Courts. This appeal arises out of judgment and decree dated 30.11.2005, passed by the Additional District Judge, Janjgir, District-Bilaspur (CG) in Civil Appeal No. 29-A/2005, arising out of judgment and decree dated 27.1.2003, passed in Civil Suit No. 111-A/1997 by the First Civil Judge Class-II, Janjgir, District-Bilaspur (CG).

The brief facts are that the plaintiff filed a suit for vacant possession of agricultural land bearing Khasra No. 454, area 0.10 acres, situated at village-Bundela. The allegations are that this land was purchased by the plaintiff through a registered sale-deed dated 31.5.1962 from Kartikram and Sitaram for a consideration of Rs.500/-. It is further alleged that the possession was also received by the plaintiff. The cause of action arose, when the defendants started raising construction on some portion of the said land and they constructed a mud house on the same in the year 1995. The plaintiff claimed that he is entitled to receive

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

vacant possession of the said land after removal of the superstructure, raised by the defendants on the same.

The defendants filed their written statement denying the contention of the plaintiff. It was contended by them that in fact, Khasra No. 454 has been shown as a pathway in the village and the plaintiff cannot be the owner of the said land. They also contended that so far as the alleged house is concerned, it is their old and ancient house, which does not situate on any part of Khasra No. 454 and they have not at all encroached upon any area of the land, alleged to have been encroached by them.

Learned trial Court framed various issues in this case and after recording evidence of the parties, dismissed the suit of the plaintiff, holding that the plaintiff could not establish that he was the owner of Khasra No. 454, area 0.10 acres. It was also held that the said Khasra No. has been shown as a pathway (*Aamrasta*) in the map. It was further held that the plaintiff could not establish that the defendants No.1 to 3 had encroached upon any portion of the said Khasra No. and in this manner, it was held that the plaintiff was not entitled to a decree for vacant possession of the suit land, which according to him, was encroached upon by the defendants.

Against the aforesaid judgment and decree, passed by the trial Court, the plaintiff filed a First Appeal before the lower appellate court. The lower appellate court also

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

dismissed his appeal, confirming the judgment and decree, passed by the trial Court.

Learned counsel for the appellant submits that the trial Court as well as the first appellate court erred in law in holding that Khasra No. 454 has been shown as a pathway in the village map. He also submits that the courts below committed an error of law by holding that the plaintiff could not establish that the defendant encroached upon any portion of Khasra No.454, as alleged by him.

I have learned counsel for the appellant at length and have also perused the records of the courts below.

For proving the ownership and encroachment, the plaintiff has filed a map vide Ex.P-5. In rebuttal, the defendants have also filed the map and as per discussion of the trial court and the first appellant court, it appears that Khasra No. 454, shown in the map has been recorded as a pathway in the village. So far as the encroachment on any portion of that Khasra No. is concerned, the plaintiff has not proved the encroachment by getting the disputed land demarcated by any expert by appointing him as a Commissioner through the agency of the court and in fact, the factum of encroachment has not been established on record.

The trial court as well as the first appellate court has concurrently recorded the findings that the plaintiff could not

(पीछे देखिये)

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	establish the factum of encroachment by the defendants over the said Khasra No.454, area 0.10 acres. I do not find any perversity in the concurrent findings recorded by the 2 courts below so as to interfere under Section 100 of the Code of Civil Procedure. In the opinion of this Court, there appears to be no substantial question of law involved in this appeal for consideration of this Court. The appeal has no merit. The same is dismissed at the motion stage itself. Sd/- Sunil Kumar Sinha Judge	
sunita		

(पीछे देखिये)

16/10/07